

DEPARTMENT OF SOCIAL SERVICES
744 P Street, Sacramento, CA 95814



February 11, 2003

ALL-COUNTY LETTER – 03-08

TO: ALL COUNTY WELFARE DIRECTORS
ALL FOOD STAMP COORDINATORS

REASON FOR THIS TRANSMITTAL

- ☐ State Law Change
- ☒ Federal Law or Regulation Change
- ☐ Court Order or Settlement Agreement
- ☐ Clarification Requested by One or More Counties
- ☐ Initiated by CDSS

SUBJECT: FOOD STAMP REAUTHORIZATION ACT OF 2002: MANDATORY
CHANGES EFFECTIVE APRIL 1, 2003

REFERENCE: PUBLIC LAW 107-171 OF MAY 13, 2002, United States Department of Agriculture (USDA) Administrative Notice (AN) 03-04 dated October 21, 2002, AN 03-12 dated January 3, 2003, and All-County Letter (ACL) 02-67 dated September 3, 2002.

The purpose of this letter is to transmit implementing instructions and proposed state regulations to County Welfare Departments (CWD) regarding changes to the Food Stamp Program (FSP) resulting from the Food Stamp Reauthorization Act of 2002, which is part of the Farm Bill of 2002 (Public Law 107-171).

RESTORATION OF LEGAL NON-CITIZENS, P.L. 107-171, SEC.4401.

Federal benefits will be restored to three categories of legal non-citizens over a three-step phase-in process. Each phase of restoration will have a 120-day quality control hold harmless period.

On October 1, 2002, federal benefits were restored to legal non-citizens who are disabled, regardless of date of entry into the United States (reference ACL 02-67). The quality control hold harmless period for these regulations expired on January 28, 2003.

The attached proposed regulations represent the second step in the restoration of federal benefits to legal non-citizens, and will apply to those legal non-citizens who have lawfully resided in the United States for five years beginning on the date of entry, and are effective April 1, 2003. Consequently, the April 2003 DFA 256 report must reflect the transition of aided legal non-citizens who will move from state funded to federally funded food stamp benefits. The 120-day quality control hold harmless period for the attached regulations is July 29, 2003.

The majority of the individuals affected by restoration of federal eligibility are most likely receiving food stamp benefits under the California Food Assistance Program (CFAP). Those individuals, effective April 1, 2003, will begin receiving their food stamp allotment from federal food stamp funding.

Additionally, many current CFAP recipients who are sponsored non-citizens may no longer be subject to the three year CFAP sponsor deeming requirement. Under federal food stamp regulations, sponsor deeming is indefinite, with a few exceptions. Therefore, the CWD shall review the affected households to determine if the CFAP deeming period has expired. If so, the CWD shall commence federal sponsor deeming requirements pursuant to MPP Section 63-503.49. Deeming determinations for affected households shall be completed by July 29, 2003 (the end of the quality control hold harmless period).

The attached proposed regulations are in the process of being filed on an emergency basis with the Secretary of State. In the interim, the CWD should initiate action from this ACL and from the proposed regulations to implement the mandatory changes effective April 1, 2003.

Also attached is a Questions and Answers document developed from AN 03-04, issued by Food and Nutrition Service, that may provide additional implementation instructions.

If you have any questions regarding the above information, please contact Bill Mullinax of the Food Stamp Policy Development Unit at (916) 657-3418.

Original document signed by

BRUCE WAGSTAFF
Deputy Director
Welfare to Work Division

Attachments

QUESTIONS AND ANSWERS FOR APRIL 1, 2003 LEGAL NON-CITIZEN REGULATIONS

Basic Eligibility

- **What is the five-year requirement?**

The Farm Security and Rural Investment Act of 2002 (Public Law 107-171), commonly referred to as the Farm Bill of 2002, restores federal food stamp eligibility to a legal immigrant who has lived in the United States as a qualified non-citizen for a period of five years or longer.

- **When does the five-year requirement go into effect?**

Qualified non-citizens meeting the five-year requirement and other program requirements may qualify for federal food stamp benefits effective April 1, 2003.

- **Who is a qualified non-citizen?**

Qualified non-citizens are non-citizens that meet the requirements found in MPP Section 63-405.

- **When does the five-year waiting period begin?**

The five-year waiting period begins on the date the immigrant obtains status as a qualified non-citizen through Immigration and Naturalization Service (INS).

- **If qualified status is granted retroactively, does the retroactive time count toward the five-year requirement?**

Yes. In certain situations, the INS may grant a non-citizen qualified status retroactively. For example, a non-citizen may enter the country on January 1, 1996, but the INS does not complete its paperwork until January 1, 1997. At that time, the INS may grant the non-citizen as an asylee beginning on the non-citizens date of entry on January 1, 1996. In this case, qualified non-citizen status begins on January 1, 1996 rather than January 1, 1997.

Deeming

- **Which immigrants are subject to deeming requirements?**

The income and resources of an immigrant's sponsor (and the sponsor's spouse) who has signed a legally binding affidavit of support are required to be counted as belonging to the immigrant (or deemed), regardless of actual availability, when determining the immigrant's eligibility and benefit amount for food stamps.

Most immigrants who enter the U.S. must have a sponsor – someone who signs an affidavit promising to provide enough financial support to maintain the immigrant at or above 125 percent of the Federal poverty line (or 100 percent for active duty military). The deeming requirements apply only to immigrants whose sponsor has signed a legally binding affidavit of support (known as 213A affidavits – Form I-864 or I-864A) on or after December 19, 1997. Prior to this time, affidavits of support were not legally binding.

- **Which immigrants are exempt from deeming requirements?**

Certain immigrants are not subject to deeming requirements. Those immigrants that are exempt include non-citizens that are participating in the food stamp program as a member of another household, non-citizens that are sponsored by an organization or group as opposed to an individual, non-citizens that are not required to have a sponsor under the Immigration and Nationality Act, indigent non-citizens, and battered non-citizens. See MPP Section 63-503.492 for additional information on sponsor exempt provisions.

- **How long does federal deeming last?**

Deeming of the sponsor's income and resources to the non-citizen lasts until the non-citizen becomes a naturalized citizen or can be credited with 40 qualifying quarters of work or the sponsor dies.

- **How much of the sponsor's income/resources are deemed to the non-citizen?**

Income:

Generally speaking, the amount of the sponsor's income attributed to the sponsored non-citizen is the total monthly earned and unearned income of the sponsor and sponsor's spouse reduced by 20 percent of their earned income and by the Food Stamp Program's gross income eligibility limit for a household equal in size to the sponsor's household. However, additional income deeming information may be found in MPP Section 63-503.493.

Resources:

Resources of the sponsor and sponsor's spouse deemed to be that of the non-citizen shall be the total amount of their resources reduced by \$1,500. For additional resource deeming requirements, please see MPP Section 63-501 and MPP Section 63-503.493

Quality Control Procedures

- Variances resulting from the misapplication of the five-year requirement will be excluded for a period of 120 days, in accordance with the federal regulations at 7CFR 275.12 (d)(2)(vii), beginning on the required implementation date of April 1, 2003.
- Reviewers will exclude all variances resulting from the misapplication of the five-year provision (such as eligibility of an immigrant based on the new requirement and any associated deeming of sponsor income) processed within the exclusion period. *The exclusion of these variances will continue until such time as the case is certified or recertified after July 29, 2003 or a change in the eligibility or status of an immigrant is reported after July 29, 2003.*
- Variances resulting from failure to act on reported changes not related to the five-year requirement will be included in the error determination process.
- If the CWD fails to act timely on new information related to the five-year provision reported prior to or during the variance exclusion period, the variance will be excluded until the expiration of the variance exclusion period.
- If the CWD fails to act timely on new information related to the five-year provision reported after the variance exclusion period, the variance will be included.

DRAFT

Amend Section 63-405 to read:

63-405 CITIZENSHIP OR ELIGIBLE NONCITIZEN STATUS (Continued) 63-405

.1 A noncitizen who is a lawful resident of the U.S. and meets any of the following requirements is eligible for participation in the federal Food Stamp Program (FSP): (Continued)

.13 INDEFINITE FOOD STAMP ELIGIBILITY CRITERIA. The following noncitizens are eligible indefinitely, provided they are one of the qualified noncitizens specified in Section 63-405.11: (Continued)

.136 Has lawfully resided in the U.S. for five years beginning on the date of entry.

HANDBOOK BEGINS HERE

(a) The five-year period begins on the date the immigrant obtains status as a qualified non-citizen through the INS. In cases where the INS grants qualified status retroactively, the CWD shall use the date that INS grants qualified status. For example, a non-citizen enters the country on January 1, 1996, but INS does not complete paperwork until January 1, 1997, and subsequently grants qualified status effective January 1, 1996. The CWD shall begin counting the five-year qualifying period on January 1, 1996.

HANDBOOK ENDS HERE

.2 (Continued)

Authority Cited: Sections 10553, 10554, and 18904, Welfare and Institutions Code.

Reference: Sections 10554 and 18904, Welfare and Institutions Code; 7 Code of Federal Regulations (CFR) 273.2(f)(1)(ii)(B)(2), (j)(3) and (4); 7 CFR 273.4(a)(2), (a)(4)(ii) and (iii), (a)(5)(ii)(2)(B) and (2)(G)(1), (C), (E), (F) and (G)(1), (a)(8), and (c)(2)(i); 7 CFR 273.10(b); 7 CFR 273.6; 7 CFR 273.11; U.S.D.A. Food and Nutrition Service Administrative Notice (AN) 92-30; Federal Register, Vol. 56, No. 233, page 63594; Federal Register, Vol. 62, No. 202, dated October 20, 1997; Public Law (P.L.) 100-202 and 100-461, P.L. 104-193, Section 402 (Personal Responsibility and Work Opportunity Reconciliation Act of 1996); P.L. 105-185, Title V, Sections 503 through 510; P.L. 107-171, Title IV, Section 4401(c); AN 96-47; AN 96-48 (Part A, page 6); AN 96-55; AN 97-02; AN 97-13; AN 97-44; AN 97-82; AN 97-103; AN 97-107; AN 98-13; AN 98-21; AN 98-28; AN 98-30; AN 98-79; AN 98-93; AN 99-01; ~~and~~ AN 99-24; and AN 03-04.